IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2227 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

==========

MRUDULABEN SUNDERLAL GHEEWALA - Petitioner
Versus
DAYALBHAI SAUJIBHAI PATEL
(DELEATED SINCE DECEASED) & 2 - Respondents

==========

Appearance :

MR AMIT V THAKKAR for Petitioner
None for Respondent(s) : 1,
MR JIGAR P RAVAL for Respondent No. 2
UNSERVED-EXPIRED (N) for Respondent(s) : 3,
NOTICE SERVED BY DS for Respondent(s) : 3.2.1
NOTICE SERVED for Respondent(s) : 3.2.2,3.2.3

==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 23/08/2006

ORAL JUDGMENT

1. Leave to delete respondent No.3 (A).

2. **Rule.**

Mr.Jigar Raval, learned advocate for respondent No.2 appears and waives service of notice of rule on behalf of respondent No.2. Rest of the respondents are not required to be served the service of notice of rule.

3. By filing instant petition under Article 227 of the Constitution of India, the petitioners seek to challenge the order dated 09.12.2004 recorded in Small Civil Suit No. 498 of 1988 by the learned Judge, Small Causes Court, Surat, by which the prayer made by the petitioners to exhibit original rent note executed by deceased Dayalbhai Saujibhai Patel with regard to the suit property produced at marked 113/1 during the Examination-in-Chief of the petitioner No. 1-B at Exhibit - 144 has been refused. It is therefore, prayed to exhibit the said document.

4. The predecessor in title of the petitioners and respondents Nos. 3-A to 3-D preferred a Small Civil Suit No. 498 of 1988, against respondent Nos. 1 and 2 in respect of the premises bearing house No. 1964, Ward No.5, situated at Haripura, Gheekanta Road, Surat seeking possession of the suit premises on the ground of permanent alteration and also on the ground of subletting the suit premises and on other grounds as stated in the plaint – Exhibit -1.

5. In the suit, the petitioners led oral evidence which is recorded at Exhibit – 144. During the examination in Chief of the petitioner No.1-B, namely Dilipbhai Sunderlal Gheewala, the original rent note of the suit premises, produced in the suit at mark 113/1 was referred. The petitioner identified the signature of respondent No.1 Dayalbhai Saujibhai Patel. The petitioner

prayed for exhibiting the said document.

6. Learned advocate for defendant No.2. objected against exhibiting the said document on the ground that the suit property is of the ownership of original plaintiff No.1 and original plaintiff No. 2 is not the owner of the suit premises as shown in the rent note; that, Sundarlal Gheewala being plaintiff No.2 was not party in the rent note, therefore, the rent note cannot be exhibited. The said objection raised by learned advocate of defendant no.2 was upheld by the learned trial Court and trial Court denied exhibiting the said document, which has given rise to the present petition.

7. This Court has considered the submissions advanced by Mr.Amit Thakar, learned advocate for the petitioners and Mr.Jigar Raval, learned advocate for the respondent, and perused the impugned order dated 09.12.2004, which is recorded while recording the deposition of Dilipbhai Sundarlal at Exibit – 144, this Court has also perused copy of the property card as well as the copy of the rent note.

8. On perusal of the property card, it is seen that the property stands in the name of Urmilaben and deceased Sunderlal Chandulal Gheewala and after demise of Sunderlal Chandulal Gheewala, the heirs and legal representatives of Sunderlal Chandulal Gheewala are mutated in the property card and also on perusal of the rent note, it is seen that rent is executed by deceased Dayalbhai Saujibhai Patel with regard to the same property.

9. Therefore, according to this Court, the trial Court ought to have exhibited the document and by not

exhibiting the document, the learned trial Judge has committed jurisdictional error in passing the impugned order. Therefore, the impugned order not exhibiting the rent note does not stand to scrutiny of this Court and therefore, deserves to be quashed and set aside by allowing this petition.

10. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order dated 09.12.2004 not exhibiting the rent note is hereby quashed and set aside, result of which the rent note produced at mark - 113/1 while recording the evidence of Dilipbhai at Exhibit – 144 is hereby exhibited. The learned trial Judge shall give regular exhibit number to that document and thereafter proceed with the trial as early as possible.

Rule is made absolute.

Direct service is permitted.

[A.M.KAPADIA, J.]

satish